



## **Case Summary**

Appellant-Defendant Tracey James (“James”) appeals his conviction of Carrying a Handgun without a License, a Class C felony.<sup>1</sup> We affirm.

## **Issue**

James raises one issue on appeal: whether the evidence was sufficient to support his conviction.

## **Facts and Procedural History**

On August 13, 2005, James consumed alcohol at a series of bars in downtown Indianapolis. He ran out of money, and telephoned Delandra Anderson (“Anderson”), who owed him money. Anderson met James downtown. Finding him very drunk, she left him to seek help. Later that evening, James stood in the middle of Meridian Street, purporting to direct traffic. Indianapolis Police Officer Thomas Wilson (“Officer Wilson”) concluded that James appeared intoxicated and arrested him.

In so doing, Officer Wilson searched James, finding a holstered handgun “tucked inside of his pants and his shorts.” Tr. at 18. According to Officer Wilson, James did not act surprised that a handgun was found in his possession. The holster was designed to fit inside pants, featuring a clip for fastening onto a belt or waistband. James acknowledged that he lacked a permit to carry the handgun. The parties later stipulated that the handgun belonged originally to Nicole Holmes, and that she gave it to Anderson.

The State charged James with Carrying a Handgun without a License, a Class A

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<sup>1</sup> Ind. Code §§ 35-47-2-1 and -23(c).

misdemeanor, and Public Intoxication, a Class B misdemeanor.<sup>2</sup> The State moved to amend the Information in light of James's previous conviction of a felony, seeking to elevate the charge of Carrying a Handgun without a License to a Class C felony.<sup>3</sup> The trial court granted the State's motion.

At trial, James testified that he could not remember directing traffic or being arrested that night, and that he awoke in jail. The trial court judge found James guilty as charged<sup>4</sup> and sentenced him to seven years imprisonment for Carrying a Handgun without a License. James now appeals.

### **Discussion and Decision**

Our standard of review when considering the sufficiency of the evidence is well settled. We will not reweigh the evidence or assess the credibility of witnesses. Robinson v. State, 699 N.E.2d 1146, 1148 (Ind. 1998). Rather, we consider only the evidence that supports the verdict and draw all reasonable inferences from that evidence. Id. We will uphold a conviction if there is substantial evidence of probative value from which a jury could have found the defendant guilty beyond a reasonable doubt. Id.

A person shall not carry a handgun on the person's body without a license. Ind. Code § 35-41-2-1. Officer Wilson and Officer James Quyle testified that the handgun was tucked inside James's waistband. James acknowledged not having a license. On appeal, James

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<sup>2</sup> I.C. § 7.1-5-1-3.

<sup>3</sup> I.C. § 35-47-2-23(c)(2)(B).

argues “that the gun was placed inside his waistband without his knowledge.” Appellant’s Br. at 6. To be found guilty, James must have voluntarily engaged in the conduct of having on his person an unlicensed handgun. See McAnalley v. State, 514 N.E.2d 831, 834 (Ind. 1987). It is a defense if the defendant was unaware of his possession “for a time sufficient for him to have terminated his possession.” I.C. § 35-41-2-1(b).

Though drunk, James managed to stand in the middle of Meridian Street without being hit, purporting to direct traffic. According to Officer Wilson’s testimony, James was not surprised that the handgun was found on his person. The evidence supports the reasonable inference that James was aware of the holstered handgun being tucked in his waistband.

### **Conclusion**

We conclude that there was sufficient evidence to support the trial court’s verdict that James was carrying a handgun without a license.

Affirmed.

VAIDIK, J., and BARNES, J., concur.

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<sup>4</sup> James does not contest his conviction for Public Intoxication.